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Keer

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

21042

FILE: B-203630

DATE: March 9, 1982

MATTER OF: Stanley Keer -- Loan Origination Fee

DIGEST: Employee may not be reimbursed loan origination fee incurred incident to purchasing a house at his new duty station, since fee is a finance charge within the meaning of Regulation Z, 12 C.F.R. § 226.4 (a) (1981). Lender's description of charge as being reimbursement for its general and administrative expenses, which are the same as overhead expenses, does not bring charge within exceptions to what constitutes a finance charge. Therefore, it is not a reimbursable item under paragraph 2-6.2d of the Federal Travel Regulations.

This decision is in response to a request for an advance decision submitted by the Defense Contract Audit Agency, Philadelphia Region, concerning reimbursement of a loan origination fee paid by Mr. Stanley Keer incident to the purchase of a home at his new duty station.

The record indicates Mr. Keer was transferred from his old duty station at Falls Church, Virginia, to Philadelphia, Pennsylvania. Incident to his transfer, he entered into a loan agreement with Advance Mortgage Corporation. He paid a loan fee of \$1,800, \$900 of it shown as a loan origination fee. Mr. Keer claims \$818 of this amount as reimbursable to him as fees paid for service charges relating to his mortgage for purchase of a residence at his new duty station. His claim is limited to the amount stated because of the overall limitation on the reimbursement of real estate expenses. We find this fee to constitute a finance charge and not reimbursable.

In support of his claim for reimbursement of the loan origination fee, Mr. Keer attached a copy of a letter dated February 6, 1981, from Anthony McDermott,

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Assistant Vice President of the Advance Mortgage Corporation. That letter states:

"In reference to the loan fee of \$1800; the \$900 shown as loan origination fee represents revenue to recover general and administrative expenses of the lender, Advance Mortgage Corporation.

"An examination of our records shows that the \$900 represents 1/100 of the total general and administrative expenses, such as heat, utilities, salaries, etc.

"The origination fee is not considered an interest charge, but rather a service fee to offset expenses."

Mr. Keer states it is improper to view this charge as a finance charge in light of the statement of the lender.

Reimbursement of relocation expenses is governed by the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). Paragraph 2-6.2d prohibits reimbursement of any item which is found to be a finance charge under Regulation Z, 12 C.F.R. § 226.4(a) (1981). In determining whether or not a particular payment is a finance charge, the statement of the lending institution cannot be simply accepted. Kenneth DeFazio, B-191038, November 28, 1978. The reviewing officials must examine the item in light of Regulation Z, and our decisions. The items comprising a finance charge are listed in subsection 226.4(a) and the items that may be excluded from finance charges in real estate transactions are listed in subsection 226.4(e). The pertinent part of Regulation Z provides:

"226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges payable directly or indirectly by the customer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension

of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party including any of the following types of charges:

- "(1) * * * any amount payable under a discount or other system of additional charges.
- "(2) Service, transaction, activity, or carrying charge.
- "(3) Loan fee, points, finder's fee, or similar charge."

Under FTR para. 2-6.2d, reimbursement of expenses incurred in connection with the sale or purchase of a house depends on whether an expense is the result of a finance charge as defined in the Truth in Lending Act, Title I (TILA), specifically 15 U.S.C. § 1605 (1976), and Regulation Z. The primary purpose of the TILA is to assure a meaningful disclosure of credit terms so that a consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. See 15 U.S.C. § 1601. Therefore, the finance charge is defined so as to distinguish between charges imposed as part of the cost of obtaining credit and charges imposed for services rendered in connection with a purchase or sale regardless of whether credit is sought or obtained.

We have found lender's fees to be charges incident to the extension of credit, within the meaning of Regulation Z and thus not reimbursable. See Claude C. Persinger, B-183972, April 16, 1976. Further, in William D. Curtis, B-186312, April 11, 1977, we concluded that a loan fee attributable to the overhead costs of the lender also falls within the definition of a finance charge in Regulation Z and is, therefore, nonreimbursable. We hold that, in the present case, that part of the origination fee used to cover the costs of running the lender's office is properly attributable to overhead and, like the portion attributable to underwriting procedures, may not be reimbursed. See Anthony J. Vrana, B-189639, March 24, 1978; Michael A. Pokorski, B-194314, June 28, 1979; Charles W. Miller,

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B-197366, April 28, 1980. The loan origination fee here reflects the mortgagee's administrative costs in connection with making the loan and is therefore "incident to * * * the extension of credit," and is a nonreimbursable finance charge. Paragraph 226.4 of Regulation Z.

Though Mr. Keer characterizes the lender's letter as an itemization of the charges, we do not agree. The letter merely describes the charge as being reimbursement for general and administrative expenses, which are the same as overhead expenses and are not reimbursable.

Accordingly, the voucher for \$818 may not be certified for payment.

Milton J. Fowler
for Comptroller General
of the United States